

REMARKS

No claims have been amended or cancelled. Claims 1-21 remain pending in this Application.

Rejection under 35 U.S.C. 102(b)

Claims 1-6, 10-15, 20 and 21 stand rejected under 35 U.S.C. 102(b) as being unpatentable over U.S. Patent No. 6,032,189, to Jinzenji. Under 35 U.S.C. 102(b), a claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference. Claim 1, as presented, recites a method comprising:

- attempting to access a shared resource;
- detecting that the shared resource is unavailable;
- determining a first back off interval for the client to delay before reattempting to access the shared resource;
- successfully accessing the shared resource upon expiration of the first back off interval; and
- determining a second back off interval for the client to delay before reattempting to access the shared resource after said successful access.

As recited in claim 1, among other things, the method requires the operations of "detecting that the (accessed) shared resource is unavailable" (annotation added), and "determining a second back off interval for the client to delay reattempting to access the shared resource after the shared resource has successfully accessed the share resource". Hereinafter, the DETECT and DETERMINE operations.

As is understood in the relevant art, in accordance with its plain meaning a

“back off interval” involves a time period where a client refrains from accessing the shared resource. While it may be characterized as a “delay” in taking action, it is not the same as a “delay” incurred in receiving something, as the former is “voluntary” on the part of the party to take action, and the latter is “involuntary”, not within the control of the receiving party.

Jinzenji disclosed a data distribution method from a shared server to a plurality of clients, having particular application to distribution of video data, where an expected starting time of decoding is specified for each packet (col. 6, lines 19-24). Jinsenji teaches equipping a receiving client to monitor for each packet, a transmission-process delay and a decoding-process delay. The former is determined when a packet is received, and it covers the time period elapsed since the arrival time of the first packet at the start of the data transfer (col. 6, line 64 – col. 7, line 2), hereinafter “elapsed time to receipt”. Whereas, the latter is measured after a packet is decoded, and it covers the time elapsed since the first packet is read out of the receive buffer for decoding, hereinafter “elapsed time to receipt and decode”. Additionally, Jinsenji teaches equipping the receiving client to take various “adaptive measures” in view of these measured times.

- if the elapsed time to receipt and decode indicates the client is able to receive and decode a packet before the time to start decoding the next packet (Fig. 4a), the client should suspend the decoding, as well as the request and receiver processes (col. 7, lines 29-34), until the time to start decoding the next packet arrives (hereinafter, “ahead of time suspension”),

- if the elapsed time to receipt and decode indicates the client is not able to receive and decode a packet before the time to start decoding the next packet (including the case the elapsed time to receipt already exceeding the time to start decoding the next packet), the client should suspend the decoding, cancel the received packets, and request for “refresh”, i.e. re-delivery (col. 7, line 41 – col. 8, line 5) (hereinafter “running behind suspension”).

Nowhere can Applicant finds any disclosure in Jinsenji that teaches the client is to check whether the server/network is “available” before accessing the server/network to request for data packets. Likewise, nowhere can Applicant finds any disclosure in Jinsenji that teaches the client is to determine a voluntary back off (wait) time, before accessing the network/server to make another request for data, after accessing the network/server to request for data.

In rejecting claim 1, the Examiner relied on the disclosure in col. 7, lines 24-29 to form the basis for asserting anticipation of the required DETECT operation. Col. 7, lines 24-29 merely disclosed that “receipt”, and “receipt and decoding” delays (elapsed times) are employed to facilitate performance of various adaptive operations (see above discussion). It does not teach the client is to “check whether the server/network is “available” before accessing the server/network to request for data packets”.

Similarly, the Examiner relied on the disclosure in col. 7, lines 10-23 to form the basis for asserting anticipation of the required DETERMINE operation. Col. 7, lines 10-23 merely disclosed the determination of the “receipt and decoding” delay –

an elapsed time, not a “back off” time, as the term “back off” is understood, in accordance with its plain meaning.

Accordingly, for at least these reasons, Jinzenji did not teach or suggest the required limitations of DETECT and DETERMINE operations. Since Jinzenji failed to anticipate each and every required limitation, claim 1 is patentable over Jinzenji.

Each of claims 10, 20, and 21 includes in substance the DETECT and DETERMINE operations of claim 1. So, for at least the same reasons, claims 10, 20 and 21 are patentable over Jinzenji.

Claims 2-6 and 11-15 depend on either claim 1 or 10, incorporating its limitations. Therefore, for at least the same reasons, claims 2-6 and 11-15 are patentable over Jinzenji.

Rejection under 35 U.S.C. 103(a)

Claims 7-9 and 16-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Jinzenji in view of U.S. Patent No. 6,185,184, to Mattaway, and claim 19 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Jinzenji in view of U.S. Patent No. 6,115,748, to Hauser.

Claims 7-9 and 16-18 depend on either claim 1 or 10, incorporating its limitations. Therefore, for at least the same reasons, claims 7-9 and 16-18 are patentable over Jinzenji. Mattaway does not remedy the above discussed deficiencies of Jinzenji. Therefore, claims 7-9 and 16-18 are patentable over Jinzenji, even when combined with Mattaway.

Claim 19 depends on claim 10, incorporating its limitations. Therefore, for at

least the same reasons, claim 19 is patentable over Jinzenji. Hauser does not remedy the above discussed deficiencies of Jinzenji. Therefore, claim 19 is patentable over Jinzenji, even when combined with Hauser.

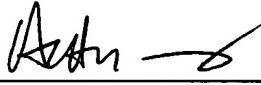
Conclusion

In view of the foregoing, claims 1-21 are in condition for allowance. Early issuance of Notice of Allowance is earnestly solicited.

Please charge deposit account No. 500393, if there is any deficiency in fees required for the filing, and likewise credit the same account for any excess payment of fees.

Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT

Dated: September 7, 2004


Al AuYeung
Reg No. 35,432

Pacwest Center, Suites 1600-1900
1211 SW Fifth Avenue
Portland, Oregon 97204
Telephone: 503-222-9981